

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

W. THOMAS SMALL, JR.,

PLAINTIFF,

V.

**RMK HIGH INCOME FUND, INC.,
RMK STRATEGIC INCOME FUND,
INC., RMK ADVANTAGE INCOME
FUND, INC., RMK MULTI-SECTOR
HIGH INCOME FUND, INC.,
MORGAN KEEGAN & COMPANY,
INC., REGIONS FINANCIAL
CORPORATION, MK HOLDING, INC.,
MORGAN ASSET MANAGEMENT,
INC., JAMES C. KELSOE, JR.,
CARTER E. ANTHONY, BRIAN B.
SULLIVAN, JOSEPH THOMPSON
WELLER, ALLEN B. MORGAN, AND
J. KENNETH ALDERMAN,**

DEFENDANTS.

CASE NO. 2:13-cv-02654

**MOTION TO TRANSFER TO JUDGE MAYS
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS
WITH MDL ACTION AND CERTIFICATE OF CONSULTATION**

COME NOW Defendants Regions Financial Corporation (“Regions”), MK Holding, Inc. (“MK Holding”), Morgan Asset Management, Inc. (“MAM”), Morgan Keegan & Company, Inc. (“Morgan Keegan”), James C. Kelsoe, Jr., Brian B. Sullivan, Joseph Thompson Weller, Allen B. Morgan, and J. Kenneth Alderman (collectively “Defendants”) and respectfully move this Court, with the consent of the Plaintiff, to transfer the above-captioned matter before the Honorable Samuel H. Mays for coordination with related discovery and pre-trial matters in the actions

comprising *In Re Regions Morgan Keegan Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation*, No. 2:09-md-02009-SHM (the “MDL Action”).¹ In support of this motion, Defendants state as follows:

1. This action involves claims against Regions, MK Holding, MAM, Morgan Keegan, and other related defendants and generally alleges the defendants mismanaged certain Regions Morgan Keegan investment funds (the “Funds”), made material misrepresentations and omissions concerning the Funds, failed to properly value the Funds’ assets, and failed to adhere to liquidity and concentration restrictions with respect to assets held by the Funds.

2. There are a number of other actions pending before this Court in which plaintiffs have made similar allegations with respect to the Funds. By Order dated September 23, 2008 (the “Consolidation Order”), Judge Mays consolidated certain putative class actions involving the Funds and pending in this judicial district into two separate matters: (1) *In re Regions Morgan Keegan Open-End Mutual Fund Litigation*, Civil Action No. 2:07-CV-02784-SHM-dkv; and (2) *In re Regions Morgan Keegan Closed-End Fund Litigation*, Civil Action No. 2:07-cv-02830-SHM-dkv. (Order in Case No. 2:07-CV-02784, PACER Doc. 154 at p. 38.) The Consolidation Order provides that “this Order shall automatically apply to all other substantively related actions arising out of or related to the same facts as alleged, or involving claims similar to those alleged, in the captioned actions, which have been filed, may be filed, or are transferred to this Court.” (*Id.* at p. 39.)

¹ The actions comprising the MDL Action are set forth in the Judicial Panel on Multidistrict Litigation’s (“JPML”) Order dated February 12, 2009, at Exhibit A to that Order (“Transfer Order”). These actions include three consolidated actions previously pending before this Court: *In re Regions Morgan Keegan Open End Mutual Fund Litigation*, Civil Action No. 2:07-cv02784-SHM-dkv; *In re Regions Morgan Keegan Fund Litigation*, Civil Action No. 2:07-cv02830-SHM-dkv; and *In re Regions Morgan Keegan ERISA Litigation*, Civil Action No.: 2:08-cv-02231-SHM-dkv.

3. By Order dated October 8, 2008, Judge Mays consolidated cases involving the Funds and ERISA into a consolidated matter identified as *In re: Regions Morgan Keegan ERISA Litigation*, Civil Action No.: 2:08-2192.

4. On February 12, 2009, the JPML issued its Transfer Order in the MDL Action concerning twenty-one actions involving the Funds. This Transfer Order transferred certain actions to this judicial district for coordinated or consolidated proceedings with similar actions already pending in this district.

5. On February 17, 2009, the MDL Action was commenced in this judicial district pursuant to the JPML's Transfer Order.

6. The rules on multidistrict litigation provide that “[w]hen civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 USCS § 1407(a).

7. *Small* is already pending in this district but has been assigned to Judge Anderson. Pursuant to Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, “tag-along actions filed in the transferee district do not require Panel action. A party should request assignment of such actions to the Section 1407 transferee judge in accordance with applicable local rules.” USCS Multi-Dist. Lit. R. 7.2(a).

8. Consistent with Rule 7.2, the terms of the JPML's Transfer Order, and Judge Mays' Consolidation Order, as well as the purposes of § 1407 of “convenience of the parties and witnesses” and to “promote the just and efficient conduct of such actions,” Defendants

respectfully request that this case be transferred to Judge Mays for coordination with the MDL Action.

WHEREFORE, Defendants respectfully request that this Court enter an order directing that this action be transferred to Judge Mays for coordinated or consolidated pretrial proceedings with the MDL Action.

Respectfully submitted this 9th day of October, 2013.

s/ Peter S. Fruin

Peter S. Fruin

Counsel for Defendants
Regions Financial Corporation, MK
Holding, Inc., Morgan Asset Management,
Inc., Morgan Keegan & Company, Inc.,
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CERTIFICATE OF CONSULTATION

The undersigned counsel has consulted with James A. Dunlap, Jr., an attorney for the Plaintiffs, and he has advised that Plaintiffs consent to the transfer of this action to Judge Mays for coordinated or consolidated pretrial proceedings with the MDL Action. The undersigned counsel has also consulted with counsel for Defendants RMK High Income Fund, Inc., RMK Strategic Income Fund, Inc., RMK Advantage Income Fund, Inc., and RMK Multi-Sector High Income Fund, Inc. and each of these Defendants consent to the transfer of this action to Judge Mays for coordinated or consolidated pretrial proceedings with the MDL Action. Defendant Carter E. Anthony has not been served in this matter and, therefore, is not a party to this Motion and we are not aware of whether he would consent or object to it.

s/ Peter S. Fruin
OF COUNSEL

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on October 9, 2013 a true and correct copy of the foregoing document was forwarded by electronic means through the Court's ECF System or by first class U.S. Mail, postage pre-paid, as indicated below, upon the following:

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